of this appeal by quoting the following decision from an old edition of *Bowstead* on Agency*:—

"Where injury or loss is caused to a third person by the wrongful act . . . . . of an agent who is acting within the scope of his authority, the principal is liable jointly and severally with the agent."

I accept that as a correct statement of the law.

In this case the trial Judge says he accepts the evidence of the plaintiff that he had hired the car from the second defendant (the present appellant) for the purpose of a trip to Singapore and that the first defendant was the driver appointed by the second defendant to drive the plaintiff to Singapore. The plaintiff was to pay $30 a day for the use of the car and this was to include the services of the driver.

If that evidence be accepted, and on all the authorities I can see no reason which would justify us in interfering with the trial Judge's decision that it should be accepted, then in the light of the statement of the law as I have stated it the second defendant was clearly liable for the damage caused by the first defendant's wrongful act in the course of the journey to Singapore.

In the circumstances I would dismiss the appeal with costs and I would order payment out of the deposit to the respondent towards his taxed costs.

Hill and Good JJ.A. concurred.

Appeal dismissed.

Solicitors: *Wong & Paramjothy; A. N. Mitra.*

MOHAMED HUSSEIN v. MOHAMED ABDULLAH

[C. A. (Thomson C.J., Hill and Good JJ. A.) May 30, 1960]

[K .L. — F.M. Civil Appeal No. 49 of 1959]

Landlord and Tenant — Business premises — Letting furnished premises for a term during his absence — "Personally in occupation of the premises" — "For a term during his absence" — Control of Rent Ordinance, 1956, s.12(1)(h) — Construction.

The respondent, before he left for India, sublet to the appellant business premises furnished for a period of two years. About a year after, he returned and when the period for which he had let the premises expired he demanded possession of them. The premises were subject to the provisions of the Control of Rent Ordinance. Ong J. held that the respondent was entitled to judgment by virtue of section 12(1)(h) of the Ordinance. On appeal,

Held: the respondent's case was well within the scope of section 12(1)(h) of the Control of Rent Ordinance and therefore the appeal must be dismissed.

Per Good J.A.: "It would be impracticable and unrealistic to construe 'for a term during his absence' as meaning either that the term and the absence must be of exactly the same duration or that the term must fall within the period of the absence. In order to arrive at an effective practical interpretation it is necessary to apply a broader test than that of time alone. The intention of the parties must be taken into consideration, and all the circumstances examined to find out whether the letting was a *bona fide* transaction connected with and incidental to the landlord's intended absence."

Cases referred to:—

(1) *Mann* v. *Merrill* [1945] 1 All E.R. 708.

(2) *R.* v. *Clixby* (1847) 11 J.P. 568.

(3) *Archer* v. *Kelly* (1860) 1 Drew and Son 300, at pp. 306-7.

(4) *Inland Revenue Commissioners* v. *St. Luke's Hospital* (1930) 144 L.T. 50.

(5) *The Queen* v. *The Inhabitants of Anderson* (1846) 9 Q.B. 663.

(6) *Henry* v. *Taylor* [1954] 1 Q.B. 506; [1954] 2 W.L.R. 601; [1954] 1 All E.R. 721.

(7) *Romon* v. *City of London Real Property Co. Ltd.* [1921] 1 K.B. 49 at p. 55.

(8) *Read* v. *Goater* [1921] 1 K.B. 611 at p. 615.

(9) *Marsh* v. *Bantoft* (1903) 67 J.P. 12.

COURT OF APPEAL.

Morris Edgar for the appellant.

R. Ramani for the respondent.

Cur. Adv. Vult.

Thomson C.J.: The plaintiff in this case has been since June, 1951, the sub-tenant of premises at No: 183, Batu Road, Kuala Lumpur, in which he carried on business as a bookseller under the name of Modern Book Store.

In 1953 he was thinking of going to India for a visit. He found himself unable to make arrangements for carrying on his business during his absence and in the event he decided to close down his business temporarily and to sub-sublet the premises to the present defendant.

On 30th November, 1953, the parties entered into a written agreement whereby the plaintiff sub-sublet the premises furnished to the defendant for a period of two years at a monthly rental of $250. I do not think anything turns on the actual terms of this agreement and so do not propose to discuss it in detail.

About the beginning of December in pursuance of this agreement the plaintiff removed his stock-in-trade from the premises and the defendant went into occupation. In the meantime he had been negotiating with the Immigration authorities regarding the time he could be absent from Malaya without endangering his right of re-entry and although he seems to have wished to be away for about two years the Immigration authorities were not prepared to allow him to be absent for more than a year with which he had perforce to be content. He accordingly proceeded to India in January, 1954, and returned to Malaya in December of that year and when the period for which he had left his premises at No: 183, Batu Road, expired he demanded possession of them. This demand was resisted and in the event he commenced the present proceedings on 26th September, 1956, that is about three months after the coming into force of the Control of Rent Ordinance, 1956, on 1st July, 1956.

The premises were subject to the provisions of the Control of Rent Ordinance, 1948, and since its repeal have been subject to the provisions of the Control of Rent Ordinance, 1956. From the commencement of the present proceedings it has been common ground that the plaintiff's case stood or fell according as to whether or not it came within the scope of section 12(1)(h) of the 1956 Ordinance which reads as follows:—

* 1944 (10th Ed.) p. 206.

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

.....

(h) where the landlord was personally in occupation of the premises, and has let the same furnished for a term during his absence from the area of the local authority area in whose area the premises are situated, and has returned to such area and requires the premises for re-occupation by himself;"

Ong J. before whom the case came for trial was of the opinion that the case did come within the scope of that provision and accordingly gave judgment in the plaintiff's favour for possession.

Against that decision the defendant has now appealed on grounds which attack individual steps in the course of reasoning followed by Ong J. rather than the result to which that course of reasoning led.

In my view the appeal is without substance.

On the evidence there is no question that the plaintiff was "personally in occupation of the premises". It is true that he did not reside on them at any time but they are business premises and there is no residential accommodation included in them. Our legislation (unlike the United Kingdom legislation) applies to business premises equally with domestic premises and the English Rent Act authorities on the subject of vicarious occupation are therefore not altogether in point. In any event it is difficult to envisage how a man can personally occupy business premises in any other way than by carrying on business on them on his own behalf.

The plaintiff did in fact absent himself from the local authority area in which the premises are situated. In fact he went to India. There was some discussion at the trial as to why he went to India and as to whether his own statement that he went there to visit a sick wife was true. But his intention in going to India was wholly immaterial. The section says nothing about intention. What it requires is that the landlord shall have in fact absented himself from the local authority area. It may well be, and I will express myself on the point when it arises, that what is required is something more than a week-end visit to the coast. That, however, is not the position here for the absence, whatever its purpose, was for a substantial period of almost a year.

Again, the premises were let furnished and they were let for a term and they were let during the whole of the period of the plaintiff's absence.

The words of the section are "has let the same furnished for a term during his absence" and to my mind the ordinary grammatical sense of these words is that "let" is governed by the words "for a term during his absence". That is the period for which the letting is to endure to bring the case within the scope of the section. And if that be the period of the letting it is clear that the length of the term of the letting need not coincide with the length of the period of absence for if that were the intention of the legislature then there would be no necessity to make any reference at all to a "term" it would have been sufficient to say "has let during his absence". The only construction that gives some meaning to every word used by the legislature is that the letting must have been for a term and that it must have been in existence during the absence of the landlord. Whether, whatever the length of the term, it must have been in existence during the whole of the absence of the landlord or whether it is sufficient that it should have been in existence for a portion of that period does not arise here and will have to be decided on some other occasion when a Batu Road tenant quarrels with his landlord for in point of fact in the present case the term included the whole period of absence.

Finally the plaintiff has returned to the local authority area, he clearly requires the premises for the primary meaning of "require" is to "demand" and not to "need" and there is no reason to doubt that he has required the premises for his own occupation, particularly when it is remembered that if there has been any misrepresentation on the point on his part the sanctions contained in section 12(3) of the new Ordinance are hanging over his head.

The plaintiff, then, in my judgment brought his case well within the scope of section 12(1)(h).

There is one other point I should mention although I do not think it was raised at the hearing of the appeal. Section 12(1) contains restrictions on the making of an order or judgment for the recovery of the possession of the premises and in my view the material date as at which the section applies is not the date of the letting of the premises or the date on which any of the numerous events mentioned in the section may have occurred but the date on which proceedings are commenced. I find support for this view in the decision of the Court of Appeal in the case of *Mann* v. *Merrill*[1].

I would dismiss this appeal with costs.

Hill J.A.: This Appeal is concerned with section 12(1)(h) of the Control of Rent Ordinance, 1956. [His Lordship quoted section 12 (1)(h) and proceeded]:

The case was heard in the High Court, Kuala Lumpur in November, 1959 and the learned trial Judge gave judgment for the plaintiff/respondent for possession and costs. The facts, which I quote from the judgment of Ong J. were not in real dispute and were as follows:—

"The plaintiff in this action is claiming vacant possession of certain furnished premises sublet by him under a written agreement to the defendant for a term certain during his intended absence in India. The premises in question are premises to which the Control of Rent Ordinance, 1956, applies, but the plaintiff bases his claim on the provisions of paragraph (h) of section 12(1) of the Ordinance.

.....

In January 1953, upon receiving a message that his wife was ill in India, the plaintiff planned to visit her and to remain, if possible, for two years there. He took time over finding a responsible person to leave in charge of his business, apparently as a going concern during

his absence but was unsuccessful, and so decided to close down his business temporarily. Eventually on November 30 of the same year, as a result of an introduction effected by one Niranjan Singh, a clerk in the War Department at Kuala Lumpur, the plaintiff entered into an agreement in writing with the defendant, (who was then proprietor of Karachi Tailoring House of No. 14N, Malay Street) to sub-let to him the whole front portion of the ground floor, together with the furniture therein, for a term of two years from December 1, 1953, at a monthly rent of $250.

.....

Plaintiff left for India in January, 1954, and having been given a re-entry permit valid for only one year, he returned in December. He stated that he did not then ask for repossession as the agreement had still one year to run. In mid-December, 1955, however, he requested the defendant to give back the premises, but was put off on that and on subsequent other occasions. His evidence on these matters was not challenged, and I accept it as true also".

In the Court below Counsel for the parties agreed that the only issue was whether or not on the facts the plaintiff was entitled to repossession by virtue of the provisions of para (h) of section 12(1) of the Control of Rent Ordinance, 1956, and for the purposes of this appeal I shall confine my decision to that issue.

I entirely agree with Ong J. that the agreement between the parties appeared to be a genuine transaction. The learned trial Judge was also satisfied that the plaintiff had a genuine intention of visiting India for at least a year and for as long as two years, if he could obtain a re-entry permit for such a period and that at all times he had the intention of resuming occupation of the premises.

If there is ambiguity in the construction of section 12(1)(h) I am inclined to agree, in view of the *bona fides* of the agreement between the parties, that a construction favourable to the landlord should be placed on para (h).

As Ong J. points out in his judgment the plaintiff, in order to succeed, had to prove: (1) that he was "personally in occupation of the premises"; (2) that he has let the same furnished; (3) that the furnished letting was "for a term during his absence from the area of the local authority in whose area the premises are situated"; and (4) that he has returned to such area and requires the premises for reoccupation by himself.

I need deal here only with (3). Here again I must quote from the judgment of the learned trial Judge:

"As to the last remaining point (namely (3)), Counsel for the defendant submitted that the words "for a term during his absence", with reference to the letting, ought to be taken to mean that the letting should be for a term which actually covered the period of the plaintiff's absence. As I understand it, the argument was that if the plaintiff was absent for a mere twelve months, whereas the term of the letting was two years, he cannot found his claim on paragraph (h), because the letting was for a term during only part of which he was absent, while for the remaining part he was in fact not absent from the area of the local authority area in whose area the premises are situated, with the result that plaintiff could not claim the benefit of the exception provided in that paragraph. I am afraid that I am not sympathetic to this view because I think such interpretation of the words in question would be illogical and unreasonable and must need defeat the object and intention of the parties in any case, where, for instance, by reason of circumstances beyond the control of the landlord the period of his absence should unexpectedly be curtailed, and he is thereby disentitled from recovering possession upon the determination of the agreed term.

I am fortified in my view that this interpretation is the only proper interpretation of section 12(1)(h) because any other would not be in accordance with the spirit and intention underlying it, and would have precisely the effect of penalising landlords rather than protecting tenants."

It is obvious that in order to avail himself of the protection afforded by para (h) a landlord must comply with its terms and one of these terms or conditions is that he must have let the premises furnished for a term during his absence (the underlining is mine).

But I think it was also clearly the intention of the legislature to protect the tenant and that it was for this reason that the letting must be *for a term* and not for an indefinite and indeterminate period during the landlord's absence, for this might well result in the tenant being no more than a licensee.

In my view, if this letting is for a definite term, it matters not if the term is less or greater than the period of absence, provided the transaction is a *bona fide* one. It may well be that the term of letting should be for at least a substantial part of the period of absence, but that question does not arise in this case.

I would dismiss this appeal with costs.

Good J.A.: I have had the advantage of reading the judgments of My Lord the Chief Justice and of Hill J.A., with which I am in complete agreement. The Chief Justice has set out the facts of the case, and I do not think it necessary to restate them.

I propose to deal only with the construction of the words "for a term during his absence".

The word "during" has been the subject of critical examination in many contexts, and many judicial opinions have been expressed as to its meaning. The Permanent Edition of "Words and Phrases", published in the United States of America — a monumental work of legal reference contained in 45 volumes — devotes 19 pages to the meaning of "during", and from the authorities quoted there I have succeeded in distilling the essential truth that it is a word of ambiguous meaning. In an Illinois appeal case, *Saunders* v. *Fox*, it was held to be capable of bearing the meanings "in the time of"; "in the course of"; and "throughout the continuance of"; and in a New York case, *Bird* v. *Beckwith*, where the question turned on the meaning of a clause in a contract which provided that the defendant should employ the plaintiff "during the seasons of navigation" it was held that because the word "during" is ambiguous evidence was admissible to show whether it meant "throughout the continuance of" or "in the course of".

Of course there will be cases where it must mean "throughout". The American Code of Criminal Procedure provides that no person indicted for a felony can be tried unless he be

personally present "during the trial". It has been held that this means throughout the whole trial, and that it is not sufficient that the accused has been present at some time in the course of the trial. And a statute allowing special registration as a voter for a person who was ill "during the time for regular registration" was held not to authorise a voter to register by special registration unless he was ill during the whole of the time for regular registration. These decisions are self-explanatory, but it is equally common, though philologically, perhaps, not quite so correct, for a person to say "I will have a talk with you during the week"; meaning, not that he intends to talk without stopping for seven days and seven nights, but that he will talk at some time in the course of the week. Clearly, then, the word must be interpreted in its context, as Patterson J. pointed out in *R.* v. *Clixby*[2] where he said:

"I think that the natural meaning of the word 'during' . . . . is 'during the whole'. The word is used in some instruments in two senses . . . The context must determine which meaning is to be preferred."

In *Archer* v. *Kelly*[3] Kindersley V. — C. held that the expression "during coverture", in relation to property of a wife acquired by her husband during the coverture, meant "after the commencement and before the termination of the coverture"; that is to say, the word was there used to describe the time at which a certain event occurred in the course of the coverture. In a different context, the word has been construed as "describing something which is continuous and occupies a certain length of time . . . like the presence in a particular place....." (*per* Rowlatt J. in *Inland Revenue Commissioners* v. *St. Luke's Hospital*[4]. And Lord Denman C.J. in *The Queen* v. *The Inhabitants of Anderson*[5] was strongly critical of the use of the word "during" in the sense of "at some time in the course of", when he said:

"With respect to the words 'during which years', it appears to me that in their strict and proper legal sense they mean for the whole of those years; and that the other meaning, namely 'at some time in those years', is colloquial and incorrect".

But that was 113 years ago; and I feel sure that if Lord Denman was with us to-day he would have to resign himself to the fact that colloquial usage has caught up with the strict and proper legal usage and has acquired a respectable status in modern English speech.

The proper approach to any question of construction of the English Rent Acts has been considered in a number of authorities to which we were referred by Mr. Ramani in the course of his argument (I have deliberately refrained from saying "during his argument"). In *Henry* v. *Taylor*[6] Denning L.J. (as he then was) said at p. 573:

"Where there is a fair choice between a literal interpretation and a reasonable interpretation, we should always choose the reasonable interpretation".

In *Remon* v. *City of London Real Property Co., Ltd.*[7] Bankes L.J. said:

"However much the draftsmanship of the Act may be open to criticism, the Court must endeavour to place a reasonable interpretation upon the Statute, if the language used admits of such an interpretation".

And in *Read* v. *Goater*[8] McCardie J. said:

"This Act (the increase of Rent and Mortgage Interest (Restrictions) Act, 1920) has not been drawn with artistic care, but the Court must not give an interpretation of it based upon extreme niceties of construction. It is essential that, wherever possible, it should be construed in a broad, practical common-sense manner so as to effect the intention of the Legislature."

That section 12(1)(h) of our Control of Rent Ordinance has not been drawn with artistic care, or even with unequivocal clarity of expression, is demonstrated by the intrinsic quality of its contents. In the first place, the words "where the landlord was personally in occupation of the premises" are conspicuously lacking in accuracy. On a literal interpretation they could mean "where the landlord was (ever, at any time) personally in occupation . . . .", etc. But it would not be a practical or common-sense interpretation to say that where a landlord was personally in occupation of a house ten years ago but has not been in occupation for the last ten years, if he makes a new letting for a term of one year and goes abroad for one year he can then return and claim an order for possession. The words must mean "where the landlord is personally in occupation ..... and lets ..... and returns ..... and requires .....". In the second place, the use of the disputed words "for a term during his absence" give rise to difficulties which could have been avoided if the draftsman had said more clearly what the Legislature intended. It follows that we must try to assign some reasonable interpretation to the paragraph as a whole, for which purpose it is necessary to ascertain the intention behind it.

In our approach to the question of construction we must first of all remind ourselves of something that has been repeatedly emphasised by the Courts: that the Rent Acts, and by analogy our Control of Rent Ordinance, were enacted for the protection of tenants. But having done this, we must be careful to recognise that section 12 of our Ordinance, while it is designed to protect the tenant by placing restrictions on the landlord's right to possession, goes on to protect the landlord by enumerating fourteen special circumstances in which the landlord shall be entitled to an order for possession. The provision in question here, paragraph (h) of sub-section (1), was manifestly designed to enable landlords to make arrangements for temporary absences from their normal place of residence without depriving themselves of the right to resume occupation of their homes or business premises on their return. This, from a practical point of view, is a necessary incident of conditions in a country where nearly half the population is non-indigenous, and where periodical absences for the purpose of visiting other countries are a commonplace in social and business life.

Now, what did the legislature set out to do? Clearly it intended that if, for example, the

occupant of a house intended to be absent for, say, six months, he could let the house furnished for six months and get it back for his own occupation on his return. But did it intend to go further? I think it must be presumed to have done so, because in practice it will not always be possible for a person to know in advance for how long he is going to be away. The well-known uncertainty which affects the booking of a sea passage, the commitments of a person's profession or business, the unforeseen onset of illness, the occurrence of some family emergency may operate to affect very materially the date of a person's intended return and to cause him, through circumstances entirely outside his control to return much earlier, or much later, than he intended when he let his house. Bearing in mind the kind of arrangements to which the provision was obviously designed to apply, it is clear that some measure of adaptability in its application is needed for its efficient working.

On the other hand, it is equally clear that it must not be so applied as to be capable of being exploited by unscrupulous landlords. To take one example: a landlord, intending to be absent for a year, lets his house for a year at $500 a month. He returns at the end of a year and finds that he can rent another house, suitable to his requirements, for $250 a month. So he goes to his tenant and magnanimously offers to extend the letting for a further year, to which the tenant agrees. It would be an unwarranted distortion of the intention of section 12(1)(h) if the landlord could invoke it to dispossess his tenant when his own tenancy came to an end.

It follows that some attention must be paid to the circumstances, the purpose and the *bona fides* of the letting. Both parties to the transaction are entitled to the protection of the law. The interests of the tenant are safeguarded by the use of the words "for a term", which give him security for a definite period. Otherwise, a landlord might make an arrangement with a person whereby he permitted that person to occupy his house for the period of his absence, giving the tenant an assurance that he would be away for a year but returning after a few months and demanding possession. There seems to me to be no doubt that if the premises are let for a term then, if the landlord returns before the end of the term, he cannot resume possession forthwith but must wait until the term has expired. But it would defeat the whole purpose of the provision, which is designed to confer reciprocal benefits on the parties, if he was to be precluded from obtaining possession merely because his absence came to an end before the expiry of the term.

For these reasons I have reached the conclusion that it would be impracticable and unrealistic to construe "for a term during his absence" as meaning either that the term and the absence must be of exactly the same duration or that the term must fall within the period of the absence. In order to arrive at an effective practical interpretation it is necessary to apply a broader test than that of time alone. The intention of the parties must be taken into consideration, and all the circumstances examined to find out whether the letting was a *bona fide* transaction connected with and incidental to the landlord's intended absence. Some support for this method of approach is to be found in the case of *Marsh* v. *Bantoft*[9] where the question was one of construction of sections 1 and 3 of the Electoral Disabilities (Military Service) Removal Act, 1900. That Act provided that absence from the United Kingdom on military service "during the continuance of the present War in South Africa" should not disqualify a person from being registered as an elector. A soldier on military service in South Africa was unable, by reason of his military duties, to return to the United Kingdom until some time after the peace was signed. The question was whether he could claim the benefit of the Act. Lord Alverstone C.J. said:

> "It is true that the strict grammatical construction of these sections would draw the line at the time peace was signed. I think that such a construction is too narrow, and we must see whether the absence has been due to services rendered necessary by the war and construe 'during the continuance of the war' to refer not to the actual duration of the war, but to absences rendered necessary by or in consequence of the war."

In other words, Lord Alverstone construed the words "during the continuance of the present war" in the light of the manifest intention of the Act, and not on the literal meaning of the words. In my view, that is the proper test to apply here. The term of the letting extended beyond the period of absence, but the premises were indisputably let while the respondent was absent, and to that extent the term of the letting can be said to have been "during his absence". Having let the premises for a term of two years he could not obtain an order for possession immediately on his return, but I do not consider that the fact of his returning to Kuala Lumpur before the term had expired precluded him from obtaining it in due course. There is nothing to indicate that the transaction was not perfectly *bona fide*. I have considered the question whether the respondent deprived himself of the benefit of the section by letting the premises for a term of two years before he had ascertained from the Immigration Authorities that his re-entry permit would remain valid for only one year but I cannot see that this affects the position.

The view that I have taken of the effect of the words "has let the same furnished for a term during his absence" is the view taken by the learned trial Judge and is founded on much the same reasons.

I would accordingly dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Bannon & Bailey; Braddell & Ramani.*